



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**NORTHEAST REGIONAL OFFICE**

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**URGENT LEGAL MATTER, PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**NOTICE OF RESPONSIBILITY AND NOTICE OF RESPONSE ACTION**

Mr. William Thibeault, President  
New Ventures Associates, LLC  
85-87 Boston Street  
Everett, Massachusetts 02149

July 2, 2007

RE: Newburyport; RTN 3-26918 ; Crow Lane Landfill; FMF #39545; M.G.L. c. 21E, 310 CMR 40.0000

Dear Mr. Thibeault:

The Massachusetts Department of Environmental Protection ("MassDEP" or "the Department") has reason to believe that the Crow Lane Landfill (the "Landfill") is or may be a disposal site as defined in the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. MassDEP has determined that the presence of hydrogen sulfide ("H<sub>2</sub>S") in the Landfill and landfill gas including, without limitation, H<sub>2</sub>S releases associated with odors and off-gassing from the Landfill and releases of leachate, which also contains heavy metals, constitute a release and/or threat of release of a hazardous material at and from the Landfill. These releases/threats of release are a result of the continuing failure of New Ventures LLC (hereinafter, "New Ventures") and William Thibeault (hereinafter, "Thibeault") to timely and adequately address and/or control the release of landfill gas from the Landfill and the continuing failure of New Ventures and Thibeault to properly maintain the Landfill, including without limitation, the leachate collection system, gas collection and treatment system, the Landfill cover, and storm water controls. The investigation and response actions to control and/or eliminate such releases are governed by M.G.L. c. 21E, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Action, and the regulations adopted thereunder, known as the Massachusetts Contingency Plan (the "MCP"; 310 CMR 40.0000).

The release/threat of release of H<sub>2</sub>S affects residential neighborhoods, the Anna Jacques Hospital, schools, senior centers and a day care center. MassDEP has determined that actions to control and/or eliminate further releases/threats of release of H<sub>2</sub>S at and from the Landfill (hereinafter collectively referred to as "Response Actions") must proceed without delay to protect public health, safety, welfare and the environment. Such Response Actions, which are more fully described below, must be promptly



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undertaken to prevent, control, minimize and/or eliminate the release/threat of release of landfill gas and H<sub>2</sub>S from the Landfill.

MassDEP has identified you ("you" refers to New Ventures and Thibeault) as a party with potential liability for Response Action costs and damages under the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, MGL. c. 21E, and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000. In addition, MassDEP has identified you as potentially liable under M.G.L. c. 21E for up to three (3) times all of its costs for assessment, containment, closure, and/or any other response action required to prevent, control, minimize and/or eliminate the release/threat of release of landfill gas, leachate and H<sub>2</sub>S from the Landfill.

This notice also provides you with an opportunity, in lieu of MassDEP, to conduct the Response Actions described below which are needed to bring the Landfill into compliance with M.G.L. c.21E. Unless you promptly reply to this notice, *MassDEP intends to take the Response Actions described below on or after July 17, 2007.* Section 4 of Massachusetts General Law Chapter 21E authorizes MassDEP to take such Response Actions and, when time allows, requires MassDEP to notify you of its intent to take such actions.

MassDEP notes that you had and continue to have knowledge of the problems arising from the presence and release/threat of release of landfill gas and leachate, that you have met with MassDEP personnel who apprised you of this condition, and that you have failed to address this condition adequately and in a timely manner.

### **RESPONSE ACTIONS MassDEP INTENDS TO TAKE**

#### **Crow Lane Landfill, Crow Lane, Newburyport, MA**

Beginning on or after July 17, 2007, MassDEP will initiate and/or continue Response Actions necessary to eliminate the release/threat of release of landfill gas, leachate and H<sub>2</sub>S presented by the Landfill and achieve a level of No Significant Risk [310 CMR 40.1000]. These Response Actions will include, but may not be limited to the following:

#### **1) Landfill Gas System**

Operate and maintain the landfill gas collection and treatment system twenty-four (24) hours per day seven (7) days per week (24/7) and expand and/or upgrade the system as needed to ensure maximum landfill gas capture efficiency and treatment including, without limitation the following immediate actions:

- a) Install, connect and operate landfill gas extraction wells EW-7, EW-10, and EW-13 as depicted on the design plan titled Landfill Gas Management Plan, revision date June 21, 2007, prepared by SITEC Environmental, Inc. ("SITEC") of Marshfield, Massachusetts, and received by the MassDEP on June 26, 2007;
- b) Adjust and modify the landfill gas extraction and treatment system as necessary to achieve the maximum effective radius of influence for the landfill gas extraction wells;

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- c) On the west/northwest side of the Landfill and elsewhere, as necessary, re-anchor and/or seal the Flexible Membrane Liner (FML) and landfill gas blanket and undertake additional measures as necessary to eliminate the release of landfill gas along the perimeter berm; and
- d) Activate the landfill gas blanket within the Phase I and II Areas of the Landfill.

## **2) Leachate Control**

- a) Maintain and expand, if necessary, the leachate collection system including maintaining seals/covers on leachate collection tanks;
- b) Remove collected leachate from leachate accumulation tanks and/or collection ponds and wetlands and properly dispose of the collected material;
- c) Maintain and/or expand capacity to manage leachate in the event of rain;
- d) Mitigate leachate breakouts by placement of cover material or by taking other appropriate measures; and
- e) Assess the impact of releases of leachate to the wetlands including, without limitation the collection and analysis of surface water, ground water, and sediment samples from impacted and potentially impacted surface waters and wetlands and of leachate samples from the leachate collection system and leachate breakouts.

## **3) Capping and Closure of the Landfill**

- a) Place a temporary cap consisting of low permeability soil on the Phase IA Area of the landfill as described in MassDEP's June 15, 2007, June 20, 2007, and June 21, 2007 correspondence to Attorney Richard J. Nysten of Lynch, DeSimone, and Nysten;
- b) Ensure stability of the existing berm and manage storm water to prevent erosion, gas breakouts and leachate generation;
- c) Control leachate contamination in wetlands and remove eroded berm material from the base of berm and the wetland;
- d) Conduct a boring and testing program to collect the additional information, as described in the MassDEP's March 7, 2007 Notice of Deficiency (NOTD) to you, that is needed to determine the as-built conditions of the existing berm and whether the revised design of the perimeter berm meets the appropriate factors of safety and design requirements in order to finalize the design of the perimeter berm and the final landfill cap;
- e) Revise the berm design plans as necessary and construct the mechanically stabilized landfill perimeter berm; and
- f) Develop and revise the design plans, as necessary, for the final capping and closure of the landfill and install and complete the final landfill cap and gas collection system in the Phase I, IA, II, IIA and III areas.

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## **INTERIM DEADLINE FOR NOTIFICATION OF YOUR INTENT TO CONDUCT RESPONSE ACTIONS**

**If you choose to perform the Response Actions described above in lieu of MassDEP, you must provide MassDEP the following items by 5:00 p.m. on July 16, 2007.**

- 1) A signed agreement with a Licensed Site Professional (LSP) and Massachusetts Registered Professional Engineer experienced in solid waste landfill construction and closure,
- 2) A written plan describing in detail the measures you will take to complete each response action listed above, eliminate substantial hazards presented by the Landfill and achieve a level of No Significant Risk and close the landfill in accordance with 310 CMR 40.0000 and 310 CMR 19.000;
- 3) A timetable for conducting the Response Actions and Landfill closure required herein; and
- 4) Based upon recent verbal statements of Thibeault that he and/or New Ventures are financially unable to complete closure of the Landfill in a manner which will eliminate the hazards presented by the Landfill, provide written assurance, beyond that which is covered by the existing Financial Assurance Mechanism ("FAM") applicable to the Landfill, that you have sufficient financial resources to timely complete each of the Response Actions and Landfill closure as required by 310 CMR 40.0170(6). Such written assurance shall include, but is not limited to, the following records and documents: an accounting of all funds received by New Ventures, LLC and/or Thibeault regarding the Landfill; audited and unaudited financial statements; federal and state tax returns for the three (3) most recent tax years; bills of lading for materials sent to the Landfill; and contracts for tipping fees and gate slips for New Ventures, LLC and William Thibeault. The written assurance provided by New Ventures, LLC and William Thibeault shall include all of their successors, assigns, affiliates and entities controlled by them or under their control.

Pursuant to 310 CMR 40.0167, MassDEP hereby establishes July 16, 2007 as an Interim Deadline by which you must respond in writing whether or not you intend to take the Response Actions.

If you fail to notify MassDEP that you intend to perform the work as indicated above, your response is inadequate or incomplete, or you fail to undertake the necessary response actions in accordance with the MCP, MassDEP may perform the necessary response actions and take appropriate legal action against you, including cost recovery activities. Pursuant to 310 40.0170(7), in the event that you request an opportunity to perform a response action at any time after the Department has commenced a response action, the Department may require that you either pay, or provide a financial assurance mechanism for the payment of, all costs the Department has incurred in connection with the disposal site prior to allowing you to conduct the remainder of the response action. In addition, pursuant to 310 CMR 40.0170(8), the Department may refuse to allow you to perform a response action, unless the Department is persuaded that:

- (a) you will comply with the deadlines and time periods for taking such actions imposed by M.G.L. c. 21E, 310 CMR 40.0000 and/or any order, permit or approval issued by the Department;
- (b) your performance of the response action will not result in or cause a hazard, or exacerbate an existing hazard, to health, safety, public welfare or the environment;

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- (c) you will otherwise conduct the response action in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws; and
- (d) you have a satisfactory record of compliance with the statutes, regulations and other requirements administered or enforced by the Department.

### **LIABILITY AND TREBLE DAMAGES**

MassDEP has identified you as a party with potential liability for response action costs and damages under M.G.L. c. 21E, § 5, with respect to the Landfill. In light of this action, MassDEP wishes to ensure that you are aware of your rights and responsibilities under Chapter 21E and the Massachusetts Contingency Plan. The attached summary is intended to provide you with information about liability under Chapter 21E to assist you in deciding what actions to take in response to this notice.

You should also be aware that you may have claims against third parties for damages, including claims for contribution or reimbursement for the costs of cleanup. Such claims do not exist indefinitely but are governed by laws, which establish the time allowed for bringing litigation. MassDEP encourages you to take any action necessary to protect any such claims you may have against third parties.

MassDEP considers you potentially liable under M.G.L. c.21E for up to three (3) times all response action costs incurred by MassDEP related to the site, and for damages to natural resources. If you fail to voluntarily take required response actions, the Commonwealth has authority to place a lien on all your property within the Commonwealth to secure its response action costs. The Commonwealth, through the Attorney General, may foreclose on any such lien or bring legal action against you to recover its response action costs. MassDEP and the Attorney General may also pursue other legal action under M.G.L. c.21E and M.G.L. c.21A Section 16 for violations of Chapter 21E and other laws, regulations, orders or approvals, including but not limited to solid waste laws, regulations and approvals.

If you can not perform the Response Actions, you must submit a notice of financial, technical or legal inability as described in 310 CMR 40.0172 to secure yourself with a defense to treble damages. Even if you have a defense to treble damages, you will still be obligated to complete response actions that you are able to perform and continue to be liable for costs and damages.

If you have any questions regarding this notice, please contact **Michael W. Dingle at MassDEP, One Winter Street, Boston, Massachusetts 02108 or at (617) 292-5959**. The Department reserves the right to conduct additional response actions in accordance with M.G.L. c.21E.

Sincerely,

**This final document copy is being provided to you electronically by the  
Massachusetts Department of Environmental Protection.  
A signed copy of this document  
is on file at the DEP office listed on the letterhead.**

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Richard J. Chalpin  
Regional Director

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## **SUMMARY OF LIABILITY UNDER CHAPTER 21E**

As stated in the Notice of Responsibility accompanying this summary, MassDEP has reason to believe that you are a Potentially Responsible Party ("PRP") with potential liability under M.G.L. c. 21E, section 5, for response action costs and damages to natural resources caused by the release and/or threat of release. MassDEP has identified you as a PRP because it believes you fall within one or more of the following categories of persons made potentially liable by subsection 5(a):

- any current owner or operator of a site from or at which there is or has been a release or threat of release of oil and/or hazardous material;
- any person who owned or operated a site at the time hazardous material was stored or disposed of;
- any person who arranged for the transport, disposal, storage or treatment of hazardous material to or at a site;
- any person who transported hazardous material to a transport, disposal, storage or treatment site from which there is or has been a release or threat of release of such material; and
- any person who otherwise caused or is legally responsible for a release or threat of release of oil or hazardous material at a site.

For purposes of the MCP, you are considered a Responsible Party ("RP") with actual liability under Chapter 21E if you fall within one of these categories unless you (1) are entitled to a defense under section 5 or other applicable law, and (2) have reasonably incurred cleanup costs in an amount equal to or greater than any applicable cap on liability under subsection 5(d).

This liability is "strict," meaning it is not based on fault, but solely on your status as an owner, operator, generator, transporter or disposer. It is also joint and several, meaning that each person who falls within one of these categories may be held liable for all response action costs incurred at the site, regardless of the existence of any other liable parties.

Section 5 provides a few narrowly drawn defenses to liability, including a defense for releases and damages caused by an act of God, an act of war or an act by a third party other than an employee, agent or person with whom the party has a contractual relationship (*see* subsection 5(c)); a defense for certain owners of residential property at which the owner maintains a permanent residence (*see* subsection 5(h)); and a defense for certain public utilities and agencies of the Commonwealth which own a right-of-way that is a site (*see* subsection 5(j)).

You may voluntarily undertake response actions under the MCP without having your liability under Chapter 21E formally adjudicated by MassDEP. If you do not take the necessary response



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actions, or fail to perform them in an appropriate and timely manner, MassDEP is authorized by Chapter 21E to perform the necessary work.

By taking the necessary response actions, you can avoid liability for response action costs incurred by MassDEP in performing these actions. If you are an RP and you fail to perform necessary response actions at the site, you may be held liable for up to three (3) times all response action costs incurred by MassDEP and sanctions may be imposed on you for failure to perform response actions required by the MCP.

Response action costs include, without limitation, the cost of direct hours spent by Department employees arranging for response actions or overseeing work performed by persons other than MassDEP or its contractors, expenses incurred by MassDEP in support of those direct hours, and payments to MassDEP's contractors (for more detail on cost liability, *see* 310 CMR 40.1200: Cost Recovery). MassDEP may also assess interest on costs incurred at the rate of twelve percent (12%), compounded annually.

Any liability to the Commonwealth under Chapter 21E constitutes a debt to the Commonwealth. To secure payment of this debt, MassDEP may place liens on all of your property in the Commonwealth under M.G.L. c. 21E, section 13. To recover this debt, the Commonwealth may foreclose on these liens or the Attorney General may bring legal action against you.

In addition to your potential liability for response action costs and damages to natural resources caused by the release, civil and criminal liability may also be imposed by a court of competent jurisdiction under M.G.L. c. 21E, section 11, and civil administrative penalties may be assessed by MassDEP under M.G.L. c. 21A, section 16, for each violation of Chapter 21E, the MCP or any order, permit or approval issued thereunder.

If you are a RP and you have reason to believe that your performance of the necessary response actions is beyond your technical, financial or legal ability, you should promptly notify MassDEP in writing of your inability in accordance with Chapter 21E, subsection 5(e), and 310 CMR 40.0172. If you assert and demonstrate in compliance therewith that performing or paying for such response action is beyond your ability, subsection 5(e) provides you with a limited defense to an action by the Commonwealth for recovery of two to three times MassDEP's response action costs and 310 CMR 40.0172 provides you with a limited defense to MassDEP's assessment of civil administrative penalties.